STATE OF MICHIGAN

COURT OF APPEALS

WAVERLY COMMUNITY SCHOOLS, Respondent-Appellee,	UNPUBLISHED August 26, 2014
v	No. 314173 MERC
INGHAM COUNTY EDUCATION ASSOCIATION/WAVERLY EDUCATION ASSOCIATION, Charging Party-Appellant.	LC No. 00-000206

Before: STEPHENS, P.J., and HOEKSTRA and METER, JJ.

Ingham County Education Association (the charging party) appeals as of right the decision and order of the Michigan Employment Relations Commission (MERC) dismissing its charge in its entirety and affirming the decision and recommended order of the administrative law judge (ALJ) that respondent did not breach its duty to bargain. We affirm.

I. BACKGROUND

On November 29, 2011, the charging party filed its charge against respondent alleging respondent violated the terms of the parties' expired collective bargaining agreement (CBA) by failing to provide lane change salary increases to nine teachers. The charging party alleged the action an unfair labor practice under § 10(1)(a) or (e) of the Public Employment Relations Act (PERA), MCL 423.201 et seq. It also brought a challenge to the constitutionality of MCL 423.215b. In lieu of a hearing, the parties entered a set of stipulated facts on February 14, 2012, to MERC.

Both the charging party and respondent stipulated that they were parties to a collective bargaining agreement that expired on June 30, 2011. They agreed that the 2010-2011 Master Agreement set forth compensation for teachers covered under the bargaining agreement. They also agreed that under the compensation plan teachers could receive step increases based upon years of service or lane increases based upon proof of educational attainment. They further agreed that the CBA expired on June 30, 2011, while the parties were in negotiations. Additionally, there was agreement that the nine teachers who presented adequate documentation of educational attainment to the respondent after the expiration of the agreement were denied lane increases solely because of 2011 PA 54, MCL 423.215b.

On July 10, 2012, ALJ Stern issued a decision and recommended order that: 1) dismissed the charge against respondent; 2) found that the Legislature barred both step increases and lane changes with MCL 423.215b; and 3) stated that MERC had no jurisdiction over the charging party's constitutional challenge. On September 4, 2012, the charging party filed exceptions to the decision and recommended order of ALJ Stern. A three member panel of MERC considered the arguments submitted by both parties and issued a decision and order on December 14, 2012. The panel concurred with the administrative law judge that 2011 PA 54 prohibited both lane change increases and step increases and affirmed dismissal of the charging party's charge.

II. STANDARD OF REVIEW

This Court's review of MERC decisions is limited. *Grand Rapids Employees Independent Union* ("GREIU") v *Grand Rapids*, 235 Mich App 398, 402; 597 NW2d 284 (1999). MERC's factual findings are conclusive as long as those findings are supported by "competent, material, and substantial evidence on the whole record." *Id*. at 403. Lesser deference is to be given to MERC's legal rulings. *Id*. Legal rulings that violate constitutional protections or a statute will be set aside. *Id*. Legal rulings will also be set aside if they are "affected by a substantial and material error of law." *Id*. (internal quotation marks and citation omitted).

Although generally this Court reviews statutory interpretation issues de novo, an agency's interpretation is entitled to respectful consideration. *In re Rovas Complaint*, 482 Mich 90, 97, 117; 754 NW2d 259 (2008). However, an agency's interpretation is not binding on this Court and the interpretation cannot conflict with the statute's plain meaning. *Id*. at 117-118.

III. ANALYSIS

The charging party first argues that MERC erred in determining that the Legislature intended to include lane changes in MCL 423.215b(1) as part of the statute's prohibition against wage increases during the period after a CBA has expired and before a new agreement is reached. We disagree and rely on our decision in *Bedford Public Schools v Bedford Educ Ass'n MEA/NEA*, ___ Mich App ___; ___ NW2d ___ (2014), to conclude that MERC did not err in determining that § 15b prohibited all wage increases, including those resulting from lane changes.

The circumstances that gave rise to *Bedford Public Schools v Bedford Educ Ass'n MEA/NEA, supra,* are identical to those in the case before us. In *Bedford* the CBA had also expired, a new agreement had not been reached and a charge was brought before MERC that the respondents had violated PERA for refusing lane change salary increases to a number of teachers who had acquired additional education. *Id*. at ___; slip op at 1. The charging party in *Bedford* also argued that MCL 423.215b(1) did not prohibit lane change increases because the Legislature specifically referred to only step increases and "the MERC has stated that step increases and lane changes are distinguishable components of wages." *Id*. at ___; slip op at 2. The *Bedford* Court first noted that PERA applies to all public employees so that "[t]he Legislature would have no apparent reason to use technical terms that are specific to public-school teachers when drafting a statute that applies to all public employees." *Id*. ___; slip op at 4. Second, our Court read pertinent parts of MCL 423.215b(1), "a public employer shall pay and provide wages and

benefits at levels and amounts that are no greater than those in effect on the expiration date of the collective bargaining agreement," and (3), "the requirements of this section apply to limit wages and benefits to the levels and amounts in effect on the effective date of this section," together to conclude that the "board may pay its teachers no more than the quantity of wages and benefits of the wage scale applicable on the effective date of 2011 PA 54. Logically, this limitation on quantity and scale of wages would include lane changes, as lane changes increase both wage quantity and wage scale." *Id.* ___; slip op at 4.

The Court, also, rejected the constitutional arguments that are presented in this case. Precedent having been established and no distinguishing facts or new law being advanced we must follow the rule established in *Bedford.*

Affirmed. No taxable costs under MCR 7.219, a question of public policy involved.

/s/ Cynthia Diane Stephens
/s/ Joel P. Hoekstra
/s/ Patrick M. Meter